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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
10

11 KATHLEEN BYWATER, an
12 individual,

13 Plaintiff,

14 vs.

15 COSTCO WHOLESALE
16 CORPORATION; COSTCO
17 WHOLESALE MEMBERSHIP, INC.;
18 and DOES 1 through 50,

19 Defendants.
20

Case No. 2:18-cv-07255-SVW-FFM

**PROTECTIVE ORDER PURSUANT TO
STIPULATION**

21
22 **1. A. PURPOSES AND LIMITATIONS**

23 Discovery in this action is likely to involve production of confidential, proprietary, or
24 private information for which special protection from public disclosure and from use for any
25 purpose other than prosecuting this litigation may be warranted. Accordingly, the parties
26 hereby stipulate to and petition the Court to enter the following Stipulated Protective Order.
27 The parties acknowledge that this Order does not confer blanket protections on all
28 disclosures or responses to discovery and that the protection it affords from public disclosure

1 and use extends only to the limited information or items that are entitled to confidential
2 treatment under the applicable legal principles. The parties further acknowledge, as set forth
3 in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file
4 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that
5 must be followed and the standards that will be applied when a party seeks permission from
6 the court to file material under seal.

7 **B. GOOD CAUSE STATEMENT**

8 This action is likely to involve requests for documents which contain trade secrets,
9 commercial, financial, technical and/or proprietary information for which special protection
10 from public disclosure and from use for any purpose other than prosecution of this action is
11 warranted. Such confidential and proprietary materials and information consist of, among
12 other things, confidential business information, information regarding confidential business
13 practices, or other confidential commercial information (including information implicating
14 privacy rights of third parties), information otherwise generally unavailable to the public, or
15 which may be privileged or otherwise protected from disclosure under state or federal
16 statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow of
17 information, to facilitate the prompt resolution of disputes over confidentiality of discovery
18 materials, to adequately protect information the parties are entitled to keep confidential, to
19 ensure that the parties are permitted reasonable necessary uses of such material in preparation
20 for and in the conduct of trial, to address their handling at the end of the litigation, and serve
21 the ends of justice, a protective order for such information is justified in this matter. It is the
22 intent of the parties that information will not be designated as confidential for tactical reasons
23 and that nothing be so designated without a good faith belief that it has been maintained in
24 a confidential, non-public manner, and there is good cause why it should not be part of the
25 public record of this case.

26 **2. DEFINITIONS**

27 2.1 Action: *Kathleen Bywater v. Costco Wholesale Corporation, et al.*

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1 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
2 information or items under this Order.

3 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is
4 generated, stored or maintained) or tangible things that qualify for protection under Federal
5 Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

6 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
7 their support staff).

8 2.5 Designating Party: a Party or Non-Party that designates information or
9 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

10 2.6 Disclosure or Discovery Material: all items or information, regardless
11 of the medium or manner in which it is generated, stored, or maintained (including, among
12 other things, testimony, transcripts, and tangible things), that are produced or generated in
13 disclosures or responses to discovery in this matter.

14 2.7 Expert: a person with specialized knowledge or experience in a matter
15 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
16 witness or as a consultant in this Action.

17 2.8 House Counsel: attorneys who are employees of a party to this Action.
18 House Counsel does not include Outside Counsel of Record or any other outside counsel.

19 2.9 Non-Party: any natural person, partnership, corporation, association, or other
20 legal entity not named as a Party to this action.

21 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this
22 Action but are retained to represent or advise a party to this Action and have appeared in
23 this Action on behalf of that party or are affiliated with a law firm which has appeared on
24 behalf of that party, and includes support staff.

25 2.11 Party: any party to this Action, including all of its officers, directors, employees,
26 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

27 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
28 Material in this Action.

1 2.13 Professional Vendors: persons or entities that provide litigation support services
2 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
3 organizing, storing, or retrieving data in any form or medium) and their employees and
4 subcontractors.

5 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
6 “CONFIDENTIAL.”

7 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
8 Producing Party.

9 **3. SCOPE**

10 The protections conferred by this Stipulation and Order cover not only Protected
11 Material (as defined above), but also (1) any information copied or extracted from Protected
12 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3)
13 any testimony, conversations, or presentations by Parties or their Counsel that might reveal
14 Protected Material.

15 Any use of Protected Material at trial shall be governed by the orders of the trial judge.
16 This Order does not govern the use of Protected Material at trial.

17 **4. DURATION**

18 Even after final disposition of this litigation, the confidentiality obligations imposed
19 by this Order shall remain in effect until a Designating Party agrees otherwise in writing or
20 a court order otherwise directs. Final disposition shall be deemed to be the later of (1)
21 dismissal of all claims and defenses in this Action, with or without prejudice; and (2) final
22 judgment herein after the completion and exhaustion of all appeals, re-hearings, remands,
23 trials, or reviews of this Action, including the time limits for filing any motions or
24 applications for extension of time pursuant to applicable law.

25 **5. DESIGNATING PROTECTED MATERIAL**

26 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
27 or Non-Party that designates information or items for protection under this Order must take
28 care to limit any such designation to specific material that qualifies under the appropriate

standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

- (a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

A Party or Non-Party that makes original documents available for inspection need not designate them for protection until after the inspecting Party has indicated which documents it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has identified the documents it wants copied and produced, the Producing

1 Party must determine which documents, or portions thereof, qualify for protection under this
2 Order. Then, before producing the specified documents, the Producing Party must affix the
3 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a portion
4 or portions of the material on a page qualifies for protection, the Producing Party also must
5 clearly identify the protected portion(s) (e.g., by making appropriate markings in the
6 margins).

7 (b) for testimony given in depositions that the Designating Party identify the
8 Disclosure or Discovery Material on the record, before the close of the deposition all
9 protected testimony.

10 (c) for information produced in some form other than documentary and for any
11 other tangible items, that the Producing Party affix in a prominent place on the exterior of
12 the container or containers in which the information is stored the legend
13 “CONFIDENTIAL.” If only a portion or portions of the information warrants protection,
14 the Producing Party, to the extent practicable, shall identify the protected portion(s).

15 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
16 designate qualified information or items does not, standing alone, waive the Designating
17 Party’s right to secure protection under this Order for such material. Upon timely correction
18 of a designation, the Receiving Party must make reasonable efforts to assure that the material
19 is treated in accordance with the provisions of this Order.

20 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

21 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
22 designation of confidentiality at any time that is consistent with the Court’s
23 Scheduling Order.

24 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
25 resolution process under Local Rule 37.1 et seq.

26 6.3 The burden of persuasion in any such challenge proceeding shall be on the
27 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to
28 harass or impose unnecessary expenses and burdens on other parties) may expose the

1 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the
2 confidentiality designation, all parties shall continue to afford the material in question the
3 level of protection to which it is entitled under the Producing Party's designation until the
4 Court rules on the challenge.

5 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

6 7.1 Basic Principles. A Receiving Party may use Protected Material that is
7 disclosed or produced by another Party or by a Non-Party in connection with this Action
8 only for prosecuting, defending, or attempting to settle this Action. Such Protected Material
9 may be disclosed only to the categories of persons and under the conditions described in
10 this Order. When the Action has been terminated, a Receiving Party must comply with the
11 provisions of section 13 below (FINAL DISPOSITION).

12 Protected Material must be stored and maintained by a Receiving Party at a location
13 and in a secure manner that ensures that access is limited to the persons authorized under
14 this Order.

15 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
16 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
17 may disclose any information or item designated "CONFIDENTIAL" only to:

18 (a) the Receiving Party's Outside Counsel of Record in this Action, as well as
19 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose
20 the information for this Action;

21 (b) the officers, directors, and employees (including House Counsel) of the Receiving
22 Party to whom disclosure is reasonably necessary for this Action;

23 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
24 reasonably necessary for this Action and who have signed the "Acknowledgment and
25 Agreement to Be Bound" (Exhibit A);

26 (d) the court and its personnel;

27 (e) court reporters and their staff;

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1 (f) professional jury or trial consultants, mock jurors, and Professional Vendors to
2 whom disclosure is reasonably necessary for this Action and who have signed the
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (g) the author or recipient of a document containing the information or a custodian
5 or other person who otherwise possessed or knew the information;

6 (h) during their depositions, witnesses, and attorneys for witnesses, in the Action to
7 whom disclosure is reasonably necessary provided: (1) the deposing party requests that the
8 witness sign the form attached as Exhibit 1 hereto; and (2) they will not be permitted to keep
9 any confidential information unless they sign the “Acknowledgment and Agreement to Be
10 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the
11 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
12 Protected Material may be separately bound by the court reporter and may not be disclosed
13 to anyone except as permitted under this Stipulated Protective Order; and

14 (i) any mediator or settlement officer, and their supporting personnel, mutually
15 agreed upon by any of the parties engaged in settlement discussions.

16 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
17 **IN OTHER LITIGATION**

18 If a Party is served with a subpoena or a court order issued in other litigation that
19 compels disclosure of any information or items designated in this Action as
20 “CONFIDENTIAL,” that Party must:

21 (a) promptly notify in writing the Designating Party. Such notification shall
22 include a copy of the subpoena or court order;

23 (b) promptly notify in writing the party who caused the subpoena or order to issue
24 in the other litigation that some or all of the material covered by the subpoena or order is
25 subject to this Protective Order. Such notification shall include a copy of this Stipulated
26 Protective Order; and

27 (c) cooperate with respect to all reasonable procedures sought to be pursued by
28 the Designating Party whose Protected Material may be affected.

1 If the Designating Party timely seeks a protective order, the Party served with the
2 subpoena or court order shall not produce any information designated in this action as
3 “CONFIDENTIAL” before a determination by the court from which the subpoena or order
4 issued, unless the Party has obtained the Designating Party’s permission. The Designating
5 Party shall bear the burden and expense of seeking protection in that court of its confidential
6 material and nothing in these provisions should be construed as authorizing or encouraging
7 a Receiving Party in this Action to disobey a lawful directive from another court.

8 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
9 **PRODUCED IN THIS LITIGATION**

10 (a) The terms of this Order are applicable to information produced by a Non-Party
11 in this Action and designated as “CONFIDENTIAL.” Such information produced by Non-
12 Parties in connection with this litigation is protected by the remedies and relief provided by
13 this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from
14 seeking additional protections.

15 (b) In the event that a Party is required, by a valid discovery request, to produce a
16 Non-Party’s confidential information in its possession, and the Party is subject to an
17 agreement with the Non-Party not to produce the Non-Party’s confidential information, then
18 the Party shall:

19 (1) promptly notify in writing the Requesting Party and the Non-Party that some or
20 all of the information requested is subject to a confidentiality agreement with a Non-Party;

21 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in
22 this Action, the relevant discovery request(s), and a reasonably specific description of the
23 information requested; and

24 (3) make the information requested available for inspection by the Non-Party, if
25 requested.

26 (c) If the Non-Party fails to seek a protective order from this court within 14 days
27 of receiving the notice and accompanying information, the Receiving Party may produce the
28 Non-Party’s confidential information responsive to the discovery request. If the Non-Party

1 timely seeks a protective order, the Receiving Party shall not produce any information in its
2 possession or control that is subject to the confidentiality agreement with the Non-Party
3 before a determination by the court. Absent a court order to the contrary, the Non-Party shall
4 bear the burden and expense of seeking protection in this court of its Protected Material.

5 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

6 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
7 Protected Material to any person or in any circumstance not authorized under this Stipulated
8 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating
9 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized
10 copies of the Protected Material, (c) inform the person or persons to whom unauthorized
11 disclosures were made of all the terms of this Order, and (d) request such person or persons
12 to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as
13 Exhibit A.

14 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE** 15 **PROTECTED MATERIAL**

16 When a Producing Party gives notice to Receiving Parties that certain inadvertently
17 produced material is subject to a claim of privilege or other protection, the obligations of the
18 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
19 provision is not intended to modify whatever procedure may be established in an e-discovery
20 order that provides for production without prior privilege review. Pursuant to Federal Rule
21 of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of
22 disclosure of a communication or information covered by the attorney-client privilege or
23 work product protection, the parties may incorporate their agreement in the stipulated
24 protective order submitted to the court.

25 **12. MISCELLANEOUS**

26 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
27 seek its modification by the Court in the future.

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1 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
2 Order no Party waives any right it otherwise would have to object to disclosing or producing
3 any information or item on any ground not addressed in this Stipulated Protective Order.
4 Similarly, no Party waives any right to object on any ground to use in evidence of any of the
5 material covered by this Protective Order.

6 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
7 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
8 under seal pursuant to a court order authorizing the sealing of the specific Protected Material
9 at issue. If a Party's request to file Protected Material under seal is denied by the court, then
10 the Receiving Party may file the information in the public record unless otherwise instructed
11 by the court.

12 **13. FINAL DISPOSITION**

13 After the final disposition of this Action, as defined in paragraph 4, within 60 days of
14 a written request by the Designating Party, each Receiving Party must return all Protected
15 Material to the Producing Party or destroy such material. As used in this subdivision, “all
16 Protected Material” includes all copies, abstracts, compilations, summaries, and any other
17 format reproducing or capturing any of the Protected Material. Whether the Protected
18 Material is returned or destroyed, the Receiving Party must submit a written certification to
19 the Producing Party (and, if not the same person or entity, to the Designating Party) by the
20 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material
21 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any
22 copies, abstracts, compilations, summaries or any other format reproducing or capturing any
23 of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
24 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
25 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
26 product, and consultant and expert work product, even if such materials contain Protected

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1 Material. Any such archival copies that contain or constitute Protected Material remain
2 subject to this Protective Order as set forth in Section 4 (DURATION).

3 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.
4

5 Dated: December 6, 2018

/S/ Frederick F. Mumm
FREDERICK F. MUMM
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, [print or type full name], of
_____ [print or type full address], declare
under penalty of perjury that I have read in its entirety and understand the Stipulated
Protective Order that was issued by the United States District Court for the Central District
of California on _____[date] in the case of *Kathleen Bywater v. Costco Wholesale
Corporation, et al.* U.S.D.C. Court Case No. 2:18-cv-07255-SVW-FFM). I agree to
comply with and to be bound by all the terms of this Stipulated Protective Order and I
understand and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in any
manner any information or item that is subject to this Stipulation Protective Order to any
person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Central District of California for the purposes of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this
action. I hereby appoint _____[print or type full name] of
_____ [print or type full address and telephone
number] as my California agent for service of process in connection with this action or any
proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed Name: _____

Signature: _____